

CHAPTER 1

INTRODUCTION

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§ 1.1 Overview of Benefits and Eligibility for U Nonimmigrant Status

The U nonimmigrant status is a nonimmigrant (temporary) status that allows non-citizen victims of crime to stay in the United States, obtain employment authorization, apply for lawful permanent resident status, and help certain family members obtain immigration status as well.¹ It was created by the Victims of Trafficking and Violence Prevention Act (hereinafter “VTVPA 2000”),² enacted in October 2000. It was later amended by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (hereinafter referred to as “VAWA 2005”),³ enacted in January 2006; the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (hereinafter referred to as “TVPRA 2008”),⁴ enacted in December 2008; and the Violence Against Women Reauthorization Act of 2013 (hereinafter referred to as “VAWA 2013”), combined with the Trafficking Victims Protection Reauthorization Act (TVPRA), signed into law on March 7, 2013. Although U nonimmigrant status and its unique adjustment provisions have been implemented through interim regulations, much of the procedure is still being worked out in USCIS policy guidance memoranda, and some of those memoranda are still pending and forthcoming.⁵

The U nonimmigrant status discussed in this manual is often colloquially referred to as a “U visa” by attorneys and community members alike. However, it is important to note that **most clients in the United States who benefit from this immigration option will not have a U visa. Instead**

¹ The terms “U visa” and “U nonimmigrant status” are often used interchangeably by attorneys and advocates. However, there is an important distinction between the two. See the Practice Pointer on the next page for more details on this distinction.

² Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [VTVPA].

³ Pub. L. 109-162, 119 Stat. 2960 (Jan. 5, 2006).

⁴ Pub L. 110-457, 122 Stat. 5087 (Dec. 23, 2008). An excerpt of the relevant sections of TVPRA 2008 is at Appendix B.

⁵ For updates on changes to the law and procedure as a result of legislative changes or USCIS policy and updated practice pointers and sample materials, please regularly check websites such as USCIS’ website at www.uscis.gov and Asista’s website at www.asistahelp.org.

they will be approved for *U nonimmigrant status*. This is an important distinction to make to clients and to understand as immigration practitioners.

PRACTICE POINTER: The Importance of the Distinction between a U Visa and U Nonimmigrant Status

Nonimmigrant status is a form of immigration status granted to your client when she is already in the United States or she arrives in the United States. It is usually indicated on an approval notice from U.S. Citizenship and Immigration Services (USCIS) and a Form I-94 and will include an expiration date. It allows your client temporarily to remain legally in the United States as a U nonimmigrant.

A **visa** is a document placed in your client's passport by a U.S. consular official. It permits your client to enter the United States and travel into and out of the United States. U nonimmigrants may obtain a multiple entry visa that can be used to repeatedly enter the United States. Therefore, the U visa allows your client to enter the United States. U nonimmigrant status allows your client to remain in the United States.

Example: Chaya was the victim of a crime in Colorado and applied for U nonimmigrant status from Denver. When it was approved, her attorney told her she now had a "U visa" when in reality she had been granted "U nonimmigrant status." Shortly thereafter, thinking she had a visa, Chaya traveled to India to visit her family. Upon attempting to return to the United States, Chaya presented her U nonimmigrant status approval notice. Because her U nonimmigrant status does not automatically confer a nonimmigrant visa to allow her to enter the United States, Chaya was not able to return to her home in Denver.

Chaya, like many other U nonimmigrants in this situation, will need to apply to obtain a U nonimmigrant *visa* through consular processing to reenter the United States. More information on this process is available in **Chapter 9**.

When Congress created the U nonimmigrant status in 2000, their intention was to protect victims of certain crimes who have gathered the courage to come forward, report the crime, and assist in the criminal investigation and prosecution. The purpose of this is two-fold. First, it enhances law enforcement's ability to investigate and prosecute crimes. Second, it furthers humanitarian interests by protecting victims of serious crimes.⁶ It is important to remember that U nonimmigrant status not only is helpful to law enforcement but is also intended, as is much of immigration policy, to protect victims and provide humanitarian relief.⁷

⁶ See USCIS News Release, *USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity*, (Dec. 8, 2008), attached as Appendix C.

⁷ An excerpt of the VTVPA 2000 Congressional findings and purpose of the U visa are at Appendix B.

The U nonimmigrant status is available to non-citizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic violence, sexual assault, felonious assault, kidnapping, and many other crimes.⁸

There is a statutory annual limit of 10,000 U visas or approved U nonimmigrant status that can be granted per year. This numeric limit applies only to principal applicants, and not to derivative cases.⁹ As of this manual's writing (February 2016), the statutory cap is expected to be reached every year, leading to a growing wait list. Those on the wait list (whose U petitions were adjudicated after the statutory cap was reached) could instead receive deferred action in the meantime.¹⁰

The duration of the U nonimmigrant status is for up to four years.¹¹ However, this period of status may be extended in certain situations.¹²

After three years of continuous physical U nonimmigrant status in the United States, the U nonimmigrant may adjust status to obtain lawful permanent residence (a green card).¹³ There are also provisions to grant derivative U nonimmigrant status, U visas and lawful permanent resident status to certain family members of U nonimmigrants.¹⁴

In 2007, interim regulations implementing the U nonimmigrant status were issued.¹⁵ They became effective on October 17, 2007, and are the current regulations as of this manual's writing (February 2016). Because the current U nonimmigrant regulations are interim, they may change

⁸ INA §§ 101(a)(15)(U), 214(p), 245(m).

⁹ INA § 214(p)(2)(B). Fiscal year 2009 was the first year for which USCIS released the number of approved cases. In that year, 5,825 principal U applicants were approved and 688 were denied. At the same time, 2,838 derivative U applicants were approved and 158 were denied. In 2010 and 2011 the statutory cap was reached before the end of the fiscal year (in late summer, early autumn). USCIS announced in late 2015 that it had already reached the 10,000 cap for FY 2016. This marks the seventh straight year that USCIS has approved the maximum of 10,000 U applications.

¹⁰ INA § 214(p)(2)(A).

¹¹ INA § 214(p)(6).

¹² See Chapter 3 for more detail about extending U nonimmigrant status past the four-year initial period.

¹³ INA § 245(m).

¹⁴ INA § 101(a)(15)(U)(ii). See Chapter 7 for a detailed discussion on assisting family members of U nonimmigrants in obtaining immigration status.

¹⁵ There was a long period of time between when the U visa was created in 2000 and when DHS issued the regulations in 2007. During that time, no U visas could be granted. In the meantime, USCIS made a form of interim relief available for those who appeared to be *prima facie* eligible for U nonimmigrant status. This form of interim relief was referred to as "U interim relief" and was outlined in a series of USCIS Interoffice Memoranda. U interim relief provided deferred action and employment authorization to those who were able to show they were *prima facie* eligible. A grant of U interim relief was not considered a binding determination that any of the eligibility requirements for U nonimmigrant status were met. Even those who were granted U interim relief were later required to apply for U nonimmigrant status and have all evidence adjudicated anew. While many of the U interim relief grantees who submitted applications for U nonimmigrant status were approved, some were ultimately denied and not granted U nonimmigrant status even though their U interim relief applications had originally been approved.

when final regulations are issued. Interim regulations can be in place for many years before the regulations become final.

In 2008, interim regulations implementing provisions for U nonimmigrants to adjust their status to permanent residence were issued. They became effective on January 12, 2009. They are also interim regulations and therefore subject to change upon issuance of the final regulations.

As of this manual's writing (February 2016), some additional implementing provisions have been issued in draft policy guidance memoranda, and additional guidance memoranda are expected. Some of these memoranda are included under **Appendix P**. USCIS policy memoranda regarding U nonimmigrants may also be found on the USCIS website at www.uscis.gov and the Asista website at www.asistahelp.org.

§ 1.2 How to Use This Manual

This manual is designed for attorneys, advocates, paralegals and other staff at nonprofit organizations, government agencies, shelters, law enforcement agencies, schools, social service agencies, health care providers and other organizations who serve immigrant communities and immigrant victims in search of help. Through this manual, we will guide you through the entire process of handling an immigration case for a U nonimmigrant status applicant—from screening for eligibility to adjusting status to lawful permanent residency and assisting eligible family members and U nonimmigrants who wish to travel to the United States.

In addition to providing a thorough explanation of the requirements and process, this manual includes numerous sample materials that may be helpful to you in putting together your client's case. The included appendices include sample versions of the immigration forms you will need, sample checklists, sample declarations, samples of the receipt notices and other correspondence you can expect to receive from USCIS, sample motions to submit to the immigration court, and more. Numerous sample materials are found at the back of this manual throughout the appendix and are referenced throughout the manual.

Some of the processing procedures for U nonimmigrants are in flux. As of this manual's writing (February 2016), the U nonimmigrant and adjustment implementing regulations are still interim (although may remain in this state for years or become final in the same form), more draft and final policy guidance memoranda are expected, USCIS forms may be updated or replaced, and U.S. consulates abroad are continuing to refine their policies to process U visas abroad. We therefore invite you to visit the Immigrant Legal Resource Center's website at www.ilrc.org/info-on-immigration-law/u-visas for updates and to join our education listserv by subscribing at www.ilrc.org/ilrc-newsletter/about-the-ilrc-newsletter to receive email messages about updates to this manual as well as in-person and webinar trainings opportunities related to U visas.

PRACTICE POINTER: Where to Find the Law, Regulations and Policy on the U Visa. Most of the policy and procedure related to the U visa are contained in one of three places: the statute, the regulations, or policy guidance issued by USCIS.

The statute is the Immigration & Nationality Act (INA), and the relevant sections are at:

- INA § 101(a)(15)(U): U nonimmigrant status eligibility requirements
- INA § 214(p): Miscellaneous U nonimmigrant requirements
- INA § 212(d)(14): U nonimmigrant inadmissibility waivers
- INA § 245(m): U nonimmigrant adjustment provisions

Much of the policy and procedure are outlined in the regulations, the relevant sections of which are:

- 8 CFR §§ 212.17, 214.14: U nonimmigrant status
- 8 CFR § 245.24: U nonimmigrant adjustment of status

Finally, as is often the case with immigration policy and procedure, some important issues related to U nonimmigrant status are addressed in USCIS policy guidance memoranda. Some of these memoranda are available on the USCIS website at www.uscis.gov.

The statute, regulations and many of the USCIS memoranda may be accessed from the “Laws” page of www.uscis.gov. Another great resource is the Asista website at www.asistahelp.org. The “Access the Clearinghouse” page includes a U visa link for all of the USCIS memoranda.

§ 1.3 Contents of This Manual

This manual contains nine chapters and an extensive appendix at the end of the manual. Please refer to these chapters for substantive coverage of the following topics:

CHAPTER 1 INTRODUCTION covers an overview of benefits and eligibility for U nonimmigrant status, the contents of this manual and how to use it, and resources to assist you in navigating this topic.

CHAPTER 2 U NONIMMIGRANT STATUS ELIGIBILITY covers eligibility for U nonimmigrant status including a detailed discussion of the eligibility requirements for the visa, red flag issues and screening tips and practice pointers.

CHAPTER 3 U NONIMMIGRANT STATUS PROCESS details step-by-step how to apply for U nonimmigrant status, including details on how to fill out the Form I-918, information about additional documentation required to obtain U nonimmigrant status, what to expect from the process, how to obtain work authorization, and how and when to communicate with USCIS about

your client's case. It also describes issues that arise after U nonimmigrant status is approved, including requesting an extension of status or the possibility of a revocation of status.

CHAPTER 4 INADMISSIBILITY GROUNDS AND I-192 WAIVER provides information about the various grounds of inadmissibility applicable to the U nonimmigrant status applicant, the standard for overcoming them with a waiver, and strategies for how to apply for the inadmissibility waiver.

CHAPTER 5 ADJUSTMENT OF STATUS ELIGIBILITY details the requirements for U nonimmigrants to obtain lawful permanent residence, as well as how jurisdictional issues, inadmissibility grounds, and prior removal orders may affect your client's case.

CHAPTER 6 ADJUSTMENT OF STATUS PROCESS is a step-by-step chapter providing details to guide you through completing the adjustment packet, including the I-485 and supporting documentation, for a U nonimmigrant.

CHAPTER 7 ASSISTING FAMILY MEMBERS is dedicated to providing information on how to help family members obtain immigration status—either as derivative family members with U nonimmigrant status or through the family petitioning process at the adjustment phase.

CHAPTER 8 REMOVAL ISSUES discusses issues impacting clients who are currently in removal proceedings and those with prior removal or deportation issues, including information on motions and stays.

CHAPTER 9 TRAVEL ISSUES is dedicated to providing practical information for helping U visa petitioners applying from abroad, U nonimmigrant status holders who wish to travel, and approved U derivatives in their home countries who wish to travel to the United States and will need to go through consular processing or apply for parole.

The **APPENDIX** found at the end of this manual provides numerous sample materials, screening sheets, checklists, USCIS memoranda and other materials that advocates may find useful in helping a client successfully obtain U nonimmigrant status.

§ 1.4 Resources

Those of us who work with U nonimmigrant status applicants are fortunate that a universe of resources exists to help advocates and attorneys with these cases, and there are numerous excellent attorneys who are willing to share the resources they have created. Attached to this manual at **Appendix A** please find a list of resources for immigration forms, fees and updates, technical assistance, websites, trainings, webinars, seminars, listservs, and other written materials.